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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,465	12/23/2003	Jorge Gustavo Vigil	P69260US0	8141
136	7590	03/31/2006	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			DRODGE, JOSEPH W	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,465

Applicant(s)

VIGIL ET AL.

Examiner

Joseph W. Drodge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0304</u> . | 6) <input type="checkbox"/> Other: ____. |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vandenmersch et al patent publication US2004/0235664 in view of Morgenstern et al patent 6,232,494 and Smith patent 5,087,740.

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Vandenmersch et al disclose purifying of glyphosate obtained by oxidation with a diacetic acid compound and containing organic impurities including at least formaldehyde (para. 2,3), by the steps of providing an initial solution of glyphosate having a concentration that may be below 3% (para. 27-31), adjusting the pH of that solution by addition of a base such as sodium or potassium hydroxide (para. 33), subjecting the solution to nanofiltration with at least one nanofiltration membrane, at ambient or slightly elevated temperature and under an elevated pressure (25-35 Kg/cm²), (nanofiltration taught in para. 34 and see para. 37 and 38 for discussions of temperature and pressure), discarding the organic impurity containing permeate (para. 55) and recovering a concentrated glyphosate solution containing approximately 97% or more of the initial glyphosate at increased concentrations of more or less than the recited 8% value (see para. 64-69).

The claims firstly differ in requiring the initial solution to also contain formic acid. However, each of Morgenstern et al (Example 16, column 38, lines 37-47) and Smith (column 1, lines 44-64) teach to manufacture glyphosate by processes that generate solutions obtained by oxidation of a reaction mixture containing both formaldehyde and formic acid, followed by various steps of removing these impurities (see Morgenstern at column 18, lines 43-46, etc. and Smith at column 2, lines 20-57 etc.). It would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized formic acid in the manufacture of the glyphosate of the Vandenmersch et al process, as suggested by Morgenstern et al and Smith, since formaldehyde and formic

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acid together serve as effective reactants in oxidation processes to increase the yield of a glyphosate product.

The claims also differ in the particular specific recited pressures and concentration or yield of the glyphosate and amounts of formaldehyde and formic acid in the permeate. However, it would have been additionally obvious to have optimized the separation of glyphosate and organic impurities and the working flow rates and pressures, by routine experimentation and variation of conditions of temperature, pressure, flow rate and pressure, and may vary depending on factors such as the particular membrane module selected as suggested by Vandenmersch in paragraph 39. He also disclose that particular temperatures and pressures employed are not critical in paragraphs 36-38.

Regarding claims 2 and 4, Smith et al teach addition of alkyl amines to glyphosate solutions being purified to increase the recovery of the glyphosate after it has been concentrated at column 4, lines 53-68 continuing to column 5, line 27.

For claim 3, Vandenmersch teaches nanofiltration performed by any desired number of nanofilters arranged in series (para. 44,51), and adjustment of flow and pressure conditions (para. 65-69).

For claim 5, Vandenmersch teach tubular or columnar nanofiltration membranes that may be of any desired size (para. 35,39) and operation at relatively cool ambient temperatures (para. 37).

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For claim 6, Vandenmersch also teach repeated recycling of the glyophosate retentate being concentrated to increase the concentration (para. 44-45) and the nanofiltration being performed under pressure (para. 65-69).

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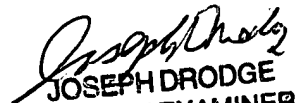
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at 571-272-1151. The fax phone number for the examining group where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

March 25, 2006


JOSEPH DRODGE
PRIMARY EXAMINER